Excise and GST/HST News

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Reminder for qualifying financial institutions – Form GST116 renewal process

Proposed amendments to the *Excise Tax Act* (the Act) provide that a financial institution which is a qualifying institution (QFI) may request authorization to use particular methods to determine the operative extent and procurative extent of each input for a particular fiscal year, beginning after March 2008.

Many QFIs will be filing Form GST116, *Application, Renewal, or Revocation of the Authorization for a Qualifying Institution to Use Particular Methods*, to request a renewal of an authorization to use particular methods that was granted for a previous fiscal year.

After Form GST116 has been filed, a QFI may be required to provide additional information in order to complete the review of the renewal request. The required information may include:

- a detailed description of the particular methods,
- a worked example for the second preceding fiscal year.

For more information, please see GST/HST Technical Information Bulletins B-097, *Determining Whether a Financial Institution is a Qualifying Institution for Purposes of Section 141.02*, or B-098, *Application of Section 141.02 to Financial Institutions that are Qualifying Institutions*, or GST/HST Notice236, *Draft GST/HST Technical Information Bulletin, Input Tax Credit Allocation Methods for Financial Institutions for Purposes of Section 141.02 of the Excise Tax Act – For Discussion Purposes Only.*

Ships' Stores Regulations

On June 18, 2009, SOR/2009-195, *Regulations Amending the Ships' Stores Regulations (2009)* were registered. Renewable fuels are now included on the list of goods that qualify as ships' stores, making them eligible for relief of the customs duties and excise taxes that would otherwise apply. For excise tax purposes, these amendments are retroactive to April 1, 2008. These amendments were published in the *Canada Gazette, Part II* on July 8, 2009 and are available on the *Canada Gazette* Web site at: www.canadagazette.gc.ca. An article in the Spring 2008 issue of *Excise and GST/HST News (No. 68)* summarized the amendments when they were proposed.

My Business Account: View your account balances and transactions, transfer payments, get additional remittance vouchers, calculate a future balance, authorize your employees and representatives, file returns, make online requests for financial transactions, and more. Go to www.cra.gc.ca/mybusinessaccount.

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Canada Revenue Agency | Agence du revenu du Canada

Canada

For purposes of the *Ships' Stores Regulations*, "renewable fuel" includes fuel that is produced from biomass, waste material or feedstock of biological origin, whether or not the fuel is blended with a petroleum product.

Subsection 68.01(2) of the *Excise Tax Act* (the Act) provides that if excise tax has been paid in respect of fuel, an application may be made by, and a refund may be paid to, a purchaser who uses fuel as ships' stores, provided that no application in respect of the fuel is made by any person under section 68.17 or 70 of the Act.

With the recent amendments to the Schedule to the *Ships' Stores Regulations*, qualified purchasers are eligible to file a form N15, *Application for Refund/Deduction of Excise Taxes* directly with the Canada Revenue Agency to apply for a refund of the excise tax paid on renewable fuel retroactive to April 1, 2008, pursuant to subsection 68.01(2) of the Act. All end-user refund claims must be submitted within two years from the date of purchase.

A qualified purchaser of renewable fuels (as well as other qualifying fuels) may now purchase fuel excise tax exempt by providing the fuel supplier, at the time of delivery, with Form K36A, *Ships' Stores Declaration and Clearance Certificate*, or other acceptable documentation.

More information

For more information please see Excise Taxes and Special Levies Notices ETSL69, *Proposed Amendment to the Ships' Stores Regulations to Include Renewable Fuels* and ETSL71, *Regulations Amending the Ships' Stores Regulations (2009)*. Please call the excise tax information line at 1-888-609-0073 for questions relating to your particular circumstances.

Distinguishing between a joint venture and a partnership

Only "persons" may register for the GST/HST under the *Excise Tax Act*.

The Act's definition of a "person" includes a partnership, but not a joint venture. For this reason, it is important to distinguish whether an arrangement is a partnership or a joint venture.

Generally, and provided all of the other conditions for GST/HST registration have been met,

- a partnership may register for the GST/HST in respect of partnership activities (GST/HST Policy Statement P-216, *Registration of a Partner* provides information concerning the eligibility of some corporate partners to register for the GST/HST in respect of partnership activities); and
- the participants in a joint venture may register for the GST/HST in respect of joint venture activities, but the joint venture itself may not register.

Determining whether there is a joint venture or a partnership

As set out in P-171R, *Distinguishing Between a Joint Venture and a Partnership for the Purposes of the Section 273 Joint Venture Election*, to determine whether a particular relationship is a joint venture or a partnership, the circumstances of the relationship should be reviewed in detail to ascertain whether it is either:

- an arrangement in which two or more persons work together in a limited and defined business undertaking, which does not constitute a partnership, a trust or a corporation, the expenses and revenues of which will be distributed in mutually agreed portions (i.e. the CRA's administrative definition of "joint venture"); or
- a relationship that subsists between persons carrying on business in common with a view to a profit (the CRA's administrative definition of "partnership").

Where, based on the circumstances of the case, neither definition applies and the arrangement is neither a partnership nor a joint venture the case should be further researched to determine the nature of the relationship.

The relevant provincial *Partnership Act* or the *Civil Code of Québec* may not, in itself, resolve the question of whether the arrangement is a joint venture or a partnership. In such cases, the relevant legislation should be applied together with the guidelines set out in P-171R.

Guidelines

The guidelines set out in P-171R may be used to help determine the existence of either a partnership or a joint venture arrangement. However, they are not individually decisive and have no legal force. Also, they should be applied and weighed on a case-by-case basis having regard to the substance of the relationship.

The guidelines relate to the following factors:

- Are there two or more parties?
- What is the intention of the parties?
- Is there a limitation to a single undertaking or ad hoc undertaking?
- Is there a right of mutual control or management?
- What is the contribution by each participant?
- Is there joint ownership in the venture subject matter?
- Is there freedom to dispose of interests in the property?
- Is there the expectation of benefits or the presence of an "adventure"?
- Is there a right to participate in the benefits?
- Is there a limitation of liabilities?
- What is the income tax treatment?
- What is the format of the agreement?

The joint venture relationship is not recognized in Quebec civil law by the *Civil Code of Québec*. Nevertheless, Quebec civil law does not prohibit the formation of a joint venture. Therefore, where an arrangement in Quebec is, according to the common law guidelines outlined above a joint venture and not a partnership, it will generally be regarded as a joint venture for GST/HST purposes.

Election

The participants of a qualifying joint venture can jointly elect to designate one of them as the operator of the joint venture, in which case the operator is responsible for accounting for GST/HST on behalf of the participants with respect to their purchases and sales made in the course of the activities of the joint venture.

This election is made using Form GST21, *Election or Revocation of an Election to Have the Joint Venture Operator Account for GST/HST*. This form must be completed by the operator for each co-venturer that wishes to jointly elect.

"Participant" of a joint venture, for purposes of that election, means:

(a) a person who, under a joint venture agreement evidenced in writing, makes an investment by contributing resources and takes a proportionate share of any revenue or incurs a proportionate share of the losses from the joint venture activities; or

(b) a person, without a financial interest, who is designated as the operator of the joint venture under an agreement in writing and is responsible for the managerial or operational control of the joint venture.

Also, for making the election in respect of a joint venture, the joint venture must be for the exploration or exploitation of mineral deposits or for a prescribed activity.

Further information

A detailed discussion of the guidelines and how they may apply, and how to distinguish between a partnership and a joint venture, is provided in GST/HST Policy Statement P-171R, *Distinguishing Between a Joint Venture and a Partnership for the Purposes of the Section 273 Joint Venture Election.* In cases where participants in a joint venture have made use of the election in subsection 273(1), please also refer to GST/HST Policy Statement P-106, *Administrative Definition of a "Participant" in a Joint Venture*, P-138R, *The Effect of Making a Joint Venture Election on a Participant's Eligibility to Register and Claim Input Tax Credits*, and P-139R, *Tax Liability and Input Tax Credit Entitlement of a Non-Electing Joint Venture Participant.* Please call GST/HST Rulings at 1-800-959-8287 to ascertain whether a relationship is a partnership or a joint venture for GST/HST purposes, whether a person is a joint venture participant for GST/HST purposes, or whether the activity of the joint venture permits the parties to make the election.

Prescribed rates of interest

The prescribed annual rate of interest in effect from July 1, 2009 to September 30, 2009, on overdue amounts payable to the Minister is 5%. The prescribed annual rate of interest on amounts owed by the Minister (i.e., rebates or refunds) is 3%. These rates are applicable to income tax, excise tax, the softwood lumber products export charge, GST/HST and the air travellers security charge (ATSC) and excise duty on wine, spirits and tobacco.

The prescribed annual rate of interest respecting excise duty on beer, on overdue amounts payable for the indicated period, is set at 3%. Refund interest rates are not applicable for amounts owed by the Minister (i.e., rebates or refunds) for excise duty that is in relation to beer.

	Income Tax, Excise Tax, Softwood Lumber Products Export Charge, GST/HST and ATSC, Excise Duty (wine, spirits, tobacco)		Excise Duty (beer)
Period	Refund Interest	Arrears and Instalment Interest	Arrears Interest
2009			
July 1 – September 30	3%	5%	3%
April 1 – June 30	3%	5%	3%
January 1 – March 31	4%	6%	4%
2008			
October 1 – December 31	5%	7%	5%

Prescribed interest rates for previous years are available on the CRA Web site at www.cra.gc.ca/interestrates.

What's new in publications

The following is a list of new or revised excise and GST/HST forms and publications.

GST/HST forms

RC1	*Request for a Business Number (BN)*
RC151	*GST/HST Credit Application for Individuals Who Become Residents of Canada*
GST469	*Direct Deposit Request (Non-Personalized)*
GST521	*GST/HST Multi-employer Pension Plan Trust Rebate Application*

GST/HST guides & pamphlets

RC2	*The Business Number and Your Canada Revenue Agency Program Accounts*
RC4072	*First Nations Tax (FNT)*
RC4050	*GST/HST Information for Selected Listed Financial Institutions*
RC4052	*GST/HST Information for the Construction Industry*
RC4210	*GST/HST Credit (Including related provincial credits and benefits) for the period from July 2009 to June 2010*
RC4365	*First Nations Goods and Services Tax (FNGST)*

GST/HST memoranda

27.1	*Calculating the GST/HST on Tour Packages*
28.1	*Ferries, Toll Roads and Toll Bridges*

Excise duty forms

B256	*General Application for Refund of Excise Duty Under the* Excise Act 2001

Excise duty memoranda

EDM1-1-1	*The Excise Duty Program*

Excise Taxes and Special Levies Notices

ETSL71	*Regulations Amending the Ships' Stores Regulations (2009)*

Softwood lumber products export charge notices

SWLN3	*Calculation of Export Price* (revision)
SWLN13	*Surge Charge – Alberta Region (June 2009)*

All GST/HST, Excise Duty, and Excise Taxes and Special Levies publications can be found on the CRA Web site at www.cra.gc.ca/gsthsttech.

Enquiries

For online access to account balances, transactions and more for your GST/HST, softwood lumber products export charge, air travellers security charge as well as excise taxes and duty accounts, visit www.cra.gc.ca/mybusinessaccount.

For general information and to make enquiries regarding your account (except for softwood lumber products export charge accounts), call Business Enquiries at 1-800-959-5525.

For enquiries regarding your softwood lumber products export charge account, call 1-800-935-0313.

To make enquiries regarding the status of specific GST/HST domestic rebate claims, call 1-800-565-9353.

For GST/HST technical enquiries call GST/HST Rulings at 1-800-959-8287.

Forms and publications
To access forms and publications online visit www.cra.gc.ca/orderforms.
To order forms and publications by telephone call 1-800-959-2221.

Are you a GST/HST registrant located in Quebec?
To make an enquiry or obtain information on the GST/HST, contact Revenu Québec at 1-800-567-4692 or visit their Web site at www.revenu.gouv.qc.ca.

The *Excise and GST/HST News* is published quarterly and highlights recent developments in the administration of the goods and services tax (GST) and harmonized sales tax (HST), First Nations goods and services tax (FNGST) and First Nations tax (FNT), softwood lumber products export charge, air travellers security charge (ATSC) as well as excise taxes and duties. If you would like to receive a link to each new edition of the *Excise and GST/HST News* as it is published, subscribe to the electronic mailing list.

This publication is provided for information purposes only and does not replace the law, either enacted or proposed. Please note that any commentary in this newsletter regarding proposed measures should not be taken as a statement by the CRA that such measures will in fact be enacted into the law in their current form. Comments or suggestions about the newsletter should be sent to the Editor, *Excise and GST/HST News*, Legislative Policy and Regulatory Affairs Branch, CRA, Ottawa, ON K1A 0L5.